June 14, 2019

Via ECFS

Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. §160(c) to Accelerate Investment in Broadband and Next-Generation Networks*; WC Docket No. 18-141

Dear Ms. Dortch:

USTelecom submits this *ex parte* letter to highlight the legal and factual errors in the March 14, 2019 *ex parte* letter and May 28, 2019 Reply Comments of Granite Telecommunications LLC, Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications, and Access One, Inc. ("Granite") in the above referenced docket.[1] Specifically, (1) there is no merit to their assertion granting the Petition would run afoul of the Administrative Procedure Act ("APA"); (2) forbearance from Section 251(c)(4) resale is in the public interest given widespread voice competition and a flourishing commercial marketplace for wholesale voice service; and (3) the factual analysis underlying Granite's assertions is fundamentally flawed. The shortcomings discussed below undermine Granite's critique of USTelecom's analysis of wholesale services.

1. Granting the Petition is Fully Compliant with the APA

Granite's assertion that there is "no factual basis"[2] for forbearance from the avoided-cost resale requirement misrepresents both the record and the APA. First, the record contains substantial evidence demonstrating that maintenance of incumbent local exchange carrier ("ILEC")-specific resale mandates is not necessary to maintain just and reasonable terms and rates, protect consumers, or otherwise safeguard the public interest. Among other things, the record shows that (1) ILEC switched access lines constitute a tiny fraction of the residential retail marketplace, and ILECs face intense competition in the provision of service to businesses;[3] (2)

[1] *See* Letter from Thomas Jones, Counsel for Granite, MetTel, and Access One to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed March 14, 2019) ("Granite *Ex Parte* Letter"); Reply Comments of Granite, MetTel, and Access One, WC Docket No. 18-141 (May 28, 2019) ("Granite Reply") at 1-4 and 9-16.

[2] Granite *Ex Parte* Letter at 3.

[3] *See* Petition at 7-19. *See also* Letter from Patrick Brogan, Vice President, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed June 15, 2018).

less than 15 percent of all resold lines, approximately one-and-a-half percent of all non-ILEC-provided lines, and less than one percent of all retail lines are provisioned via Section 251(c)(4) resale arrangements;[4] and (3) following a forbearance grant, ILECs will face strong incentives to continue providing wholesale offerings to ensure that their networks remain in use, just as facilities-based wireless providers continue to supply such offerings long after the elimination of the wireless resale mandate.[5] As USTelecom explained in its May 9 Reply Comments, the new data entered into the record by the Wireline Competition Bureau further demonstrates the near-ubiquity of cable services at speeds of 25 Mbps/3 Mbps, which provide robust competition against ILECs' retail offerings and thus "confirm[] that the Commission should forbear from … avoided-cost resale on a nationwide basis."[6] Granite's assertion that there is no factual basis for forbearance is, in short, flatly wrong.

Granite's suggestion that the APA forbids forbearance absent a particular type of data or a specific form of market analysis is likewise erroneous. The decision Granite cites, *National Lifeline Association v. FCC*,[7] stands for the unremarkable proposition that when an agency departs from a prior approach, it must acknowledge it is doing so, account for any reliance interests, provide a reasoned explanation for its new framework, and point to record evidence supporting its decision.[8] Granite appears to assume that the Commission could not forbear consistent with these demands, but this is nonsense – as the discussion above makes clear, there is more than enough record evidence to demonstrate that Section 10(a)'s requirements for forbearance are met. To the extent Granite reads *National Lifeline Association* to require a specific *type* of evidence – one that Granite presumably deems absent here – that reading is incorrect. The court chastised the Commission not for relying on the wrong *type* of evidence, but rather for "referr[ing] to *no* evidence" at all in support of its position.[9] Nor is there merit to Granite's suggestion that the Commission must perform a specific type of market analysis in reviewing USTelecom's Petition.[10] To the contrary, the D.C. Circuit has made plain that the

[4] *See* Petition at 18; Letter from Patrick Halley, Senior Vice President, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed May 6, 2019) ("May 6 *Ex Parte* Letter") at 12; Letter from Patrick Halley, Senior Vice President, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed May 24, 2019) ("May 24 *Ex Parte* Letter") at 6. *See also,* Section 3 below, noting that 251(c)(4) resale accounts for a very small and declining share of overall lines and non-ILEC lines even when limiting the percentages to a share *business* lines.

[5] *See* Petition at 29-33.

[6] *See* Reply Comments of USTelecom – The Broadband Association, WC Docket No. 18-141 *et al.*, at 6 (filed May 28, 2019); *see also* Comments of AT&T, WC Docket Nos. 18-141 *et al.*, at 15-16 (filed May 9, 2019) (rebutting Granite's claim in specific using redacted confidential data).

[7] 915 F.3d 19 (D.C. Cir. 2019).

[8] *Id*. at 28-32.

[9] *Id.* at 30 (emphasis added).

[10] *See* Opposition of Granite to USTelecom's Forbearance Petition, WC Docket No. 18-141 at 11-24 (filed Aug. 6, 2018).

Commission's forbearance analysis is not constrained to any particular analytical framework.[11] Section 10 does not impose "a particular mode or market analysis or level of geographic rigor, but rather "allow[s] the forbearance analysis to vary depending on the circumstances," empowering the Commission to "tailor[] the forbearance inquiry to the situation at hand."[12] Again, there is ample record evidence supporting forbearance here.

2. Granting Forbearance from 251(c)(4) Is In the Public Interest

Granite does not dispute USTelecom data demonstrating that wholesale lines obtained pursuant to Section 251(c)(4) represent a very small share of overall wholesale lines – approximately 15 percent and declining.[13] This means that voice resellers obtain the vast majority of their resold lines via commercial wholesale arrangement – approximately 85 percent, or six-and-a-half times as many as via Section 251(c)(4) resale. As a result, USTelecom's conclusions remain the same: Section 251(c)(4) resale represents a small and declining share of an intensely competitive voice marketplace, and is not necessary *even for providers that rely on resale*. Therefore national forbearance from Section 251(c)(4) of the Act is warranted. This is the case regardless of whether the relevant market consists of all voice lines, or just business lines.[14]

Granite offers nothing to dispute or account for the fact that Section 251(c)(4) resale represents a small and declining portion of wholesale lines overall. Granite's proposed analysis asks the Commission to assume that forbearance would eliminate *all* non-ILEC lines sold via switched wholesale. But that is not so. The question in this proceeding is the continuing relevance of the *subset* of wholesale lines obtained pursuant to Section 251(c)(4) resale. USTelecom has already provided data showing that 251(c)(4) resale represents a very small portion of resold ILEC switched wholesale service and an extremely small share of the overall marketplace: 0.8 percent of all lines; 1.7 percent of business lines; 1.5 percent of all non-ILEC lines; and 3.0 percent of non-ILEC business lines.[15]

Granite's attempt to bridge the gap between commercial and regulated resale by claiming that Section 251(c)(4) provides essential leverage in commercial negotiations.[16] The small and declining share Section of 251(c)(4) resale lines belies that claim; and in any case, the statutory purpose of Section 251(c)(4) is not to provide negotiating leverage, but to serve as a competitive market entry option in its own right, *where there are no adequate alternatives*. The relatively large size of the commercial wholesale market is a clear indicator that competition is providing widespread incentives for ILECs to offer commercial access to their networks. This is exactly

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[11] *See Earthlink v. FCC*, 462 F.3d 1, 8 (D.C. Cir. 2006).

[12] *Id.* at 8-9.

[13] *See* May 6 *Ex Parte* Letter at 13 and May 24 *Ex Parte* Letter at 5.

[14] Granite Reply at 10-11.

[15] *See infra* at page 5 for calculations as a share of business lines. *See* May 6 *Ex Parte* Letter at 13; *see also* May 24 *Ex Parte* Letter at Table 2, for calculations as a share of all lines.

[16] Granite Reply at 10.

the type of competition that Congress envisioned in Section 10 of the 1996 Act and demonstrates why a grant of relief is consistent with the public interest.[17] As USTelecom has previously stated, when evaluating whether forbearance is in the public interest, the Commission must consider whether forbearance will promote competitive market conditions. When a market is subject to a significant amount of competition and other regulatory safeguards are present, such that an outdated statute is no longer necessary for the protection of consumers or to ensure that parties do not engage in unjust or unreasonable practices, forbearance is consistent with the public interest.[18]

3. Granite's Forbearance Analysis Is Fundamentally Flawed

Granite's assertions about the factors required for a forbearance analysis and the facts on which it relies are fundamentally flawed. Granite criticizes USTelecom's analysis of the share of non-ILEC lines served using ILEC switched wholesale services.[19] Granite alleges that the "correct" way to analyze the figures is to compare (a) the total number of wholesale lines to (b) end user business and government (hereafter "business ") lines provided over traditional ILEC Time Division Multiplexed ("TDM"), or circuit-switched (hereafter "switched"), copper loops (but not lines provisioned over other technologies).[20] With respect to Granite's claim that wholesale lines should be analyzed in the context of business customers, USTelecom provides supplemental analysis here showing that Section 251(c)(4) wholesale lines represent only 1.7 percent of all business lines and 3.0 percent of non-ILEC business lines as of mid-2017.[21]

USTelecom strongly opposes Granite's claim that there is a separate end-user product market for switched voice over copper loops,[22] and that as a result the forbearance analysis must compare switched wholesale lines to the total number of switched copper lines rather than to the total number of all voice lines, irrespective of technology. As discussed below, there is no basis for assuming that switched voice service over copper loops is a distinct product market, to be analyzed without reference to economic substitutes. In any event, Granite has not established or

[17] 47 U.S.C. § 160 ("Section 10").

[18] Letter from Patrick Halley, Senior Vice President, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed June 5, 2019) ("June 5 *Ex Parte* Letter") at 2-3.

[19] In its May 6 *Ex Parte* Letter, with supplemental data provided in its May 24 *Ex Parte* Letter, USTelecom compared resale lines to the total number of end-user switched and interconnected VoIP lines, and the total number of non-ILEC end-user switched and interconnected VoIP lines. *See* May 6 *Ex Parte* Letter at 12-14. *See also* May 24 *Ex Parte* Letter at 5-6.

[20] Granite Reply at 10.

[21] Granite Reply at 2, 11-12 (stating that Granite "do[es] not provide resold traditional TDM service to residential customers and believe that only a *de minimis* number of resold traditional TDM lines are provided by other CLECs to residential customers.").

[22] This hypothetical market excludes switched service over non-copper loops and interconnected Voice over Internet Protocol (VoIP). *See* Granite et al replies at 2, 10. TPx makes a similar incorrect assertion that there is separate market for service provisioned via switched copper networks. *See* Reply Comments of U.S. Telepacific Corp., MPower Communications Corp., and Arrival Communications, Inc. WC Docket 18-141, at 9, (filed May 28, 2019) ("TPx Replies").

adequately quantified such a hypothetical niche market. Even if Granite had established the existence of such a distinct end-user product market, their proposed calculations implicitly assume that all switched line customers are in that hypothesized niche market, which is an overbroad reading that leads to an invalid analysis.

a. Business Services May Be Analyzed Separately

USTelecom agrees that the vast majority of wholesale lines are business lines and that, in addition to looking at the overall voice market, it makes sense to analyze the business market separately. However, FCC data do not break out non-ILEC wholesale lines used for business and residential customers. Without either hard data or some indicator to develop a reasonable estimate of the business portion of wholesale lines, USTelecom did not initially calculate the wholesale share of business lines. However, USTelecom provides the following analysis in response to the issues raised in the Granite Reply. According to the FCC Mid-Year 2017 Voice Telecommunications Service Report ("FCC Mid-2017 VTS Report"), there were 56.6 million total ILEC and non-ILEC end-user business lines, and there were 31.9 million non-ILEC end-user business lines, including switched and interconnected VoIP lines.[23] The 6.3 million total wholesale lines represented 11.2 percent of total business end-user lines and 19.9 percent of non-ILEC business lines. Extrapolating from data cited in the May 6 *Ex Parte* Letter and the May 24 *Ex Parte* Letter, and assuming all resold lines are business lines, one can assume that approximately 15.3 percent of the 6.3 million wholesale lines as of mid-2017, or about 970,000, are Section 251(c)(4) resale lines.[24] Thus, Section 251(c)(4) resale accounts for an estimated 1.7 percent of all end-user business lines and 3.0 percent of non-ILEC end-user business lines. Table 1 below details these calculations.

b. Switched Copper Loops Do Not Constitute a Separate Market

USTelecom emphatically disagrees with Granite's claim that the Commission must limit the analysis of wholesale lines exclusively to a share of switched lines provided *via copper loops*. For starters, Granite's premise is not valid. They have asserted, with little more than anecdotal claims, that there is a separate end-user product market for business circuit switched services provided over copper loops. The FCC has not recognized, nor has Granite established, the existence of such a distinct product market. To the contrary, the Commission "look[s] to see if services are reasonably substitutable to determine an appropriate product market."[25] In the 2017 *BDS Order*, the Commission considered and rejected arguments that TDM services occupied a product market distinct from competing packet-based services. That decision explained that the Commission "has long considered TDM and packet-based business data

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[23] Federal Communications Commission, Voice Telephone Services: Status as of June 30, 2017 (November 2018) ("FCC Mid-2017 VTS Report") at Table 1. Throughout this letter, USTelecom refers to line items in Table 1 of the FCC Mid-2017 VTS Report as "FCC VTS Report Table 1 Reference Line [number]."

[24] May 6 *Ex Parte* Letter at 13; May 24 *Ex Parte* Letter at 5.

[25] *Business Data Services in an Internet Protocol Environment et al*., Report and Order, 32 FCC Rcd 3459, 3468-69, para. 18 (2017) ("*BDS Order*").

services as functionally interchangeable at comparable capacities and has consistently included both types of business data services in its orders and forbearance decisions," and that "[c]ourts, in turn, have upheld the Commission's view." While "commenters have pointed out some differences between these technologies, there is considerable evidence in the record indicating that the Commission's view on sufficient substitutability of circuit and packet business data services still holds."[26] This conclusion applies with equal force to the resold services at issue here, which, like BDS, are chiefly business-focused offerings. The relevant question is not whether a consumer served by a Section 251(c)(4) resold copper-based TDM loop will continue to have access to copper-based service (although such a customer likely *would* retain access to such service, offered at wholesale on a commercial basis), but whether the customer would have access to an economic substitute provisioned over *any* technology.

Even if the premise of a separate end-user switched copper loop product market were valid, Granite's proposed analysis is not. It is overbroad because it assumes that *all* switched copper loop customers are *unwilling to purchase* service that is either non-switched, non-copper-loop, or both, such as interconnected VoIP service or switched service over fiber, coaxial cable, or fixed wireless. To analyze the relative contribution of ILEC switched wholesale services in such a hypothetical market, one would have to identify those switched copper loop end-user customers of ILECs and non-ILECs who were *unwilling to purchase* any other type of service.[27] Then, one would have to calculate the percentage of those switched-copper-loop-only customers served by non-ILECs via resold ILEC copper loops as a share of *all* switched-copper-loop-only customers served by *any* means of provision. This would include ILEC services provided via owned copper loops; non-ILEC services provided via owned loops; non-ILEC services provided via ILEC UNE loops; and non-ILEC services provided via resold ILEC loops. Having failed to identify the existence of such a hypothetical market and quantify the relevant niche of customers, Granite's proposed analysis is overbroad and therefore invalid.

4. Granite Erred in its Analysis of the Appropriate Numerator and Denominator for Resold ILEC Lines

In its quest to overstate the proportion of total lines resold under Section 251(c)(4), Granite both erroneously inflates the numerator in the "resold lines/total lines" calculation and erroneously *deflates* the denominator. These mistakes invalidate Granite's calculations.

a. The Numerator Proposed by Granite is Invalid

Granite erred in its analysis for the upper bound and lower bound for the numerator. Below, USTelecom demonstrates that the 6.3 million figure appropriately remains characterized as an upper bound, despite Granite's characterization of non-ILEC reported 6.347 million lines

[26] *Id.* at para. 26.

[27] This is a highly simplified characterization of what is typically a complex economic analysis used to define product markets. For example, a common approach to identifying product markets involves measuring cross price elasticity of demand, or customer willingness to switch among products or services in response to certain price increases. If demand is "inelastic," i.e., customers are relatively unwilling to switch between products, then a separate product market may be defined.

provided via wholesale as a new "lower bound" for the numerator and their proposed 7.626 million lines as a new "upper bound" for the numerator.

USTelecom appropriately characterizes the 6.347 million as an upper bound for resold ILEC lines because the language describing the category (VTS Report Table 1 Reference Line 78) refers to service obtained from any "unaffiliated entity," ILEC or otherwise. While USTelecom believes that such unaffiliated entities in the vast majority of cases are ILECs, it is possible that an unaffiliated entity is something other than an ILEC. Granite also quibbles with USTelecom's characterization of the ILEC-reported 3.4 million wholesale lines as a "lower bound" for the number of non-ILEC lines provided via ILEC wholesale, since non-ILECs channelize lines purchased for resale. The disagreement is essentially semantic. USTelecom effectively conceded this point when it ran its calculations based on the 6.3 million non-ILEC-reported lines, citing channelization. [28]

Granite's proposed new upper bound "viable numerator" of 7.626 million is invalid, and reflects a misunderstanding of the FCC's VTS data. Granite's suggestion that 9.388 million lines provided over non-ILEC switched copper loops (VTS Table 1 Reference Line 61) minus 1.772 million lines provided via ILEC UNE Loops (VTS Table 1 Reference Line 77) represents a "reasonable upper bound numerator," i.e., 7.626 million non-ILEC end-user lines obtained via wholesale. However, a breakdown of figures from the FCC Mid-2017 VTS Report demonstrates that the 1.279 million lines over and above the 6.347 million non-ILEC-reported lines obtained via wholesale (VTS Table 1 Reference Line 78) can only be non-ILEC-owned copper loops, which clearly do not belong in the numerator. Therefore, the proposed new upper bound numerator of 7.626 million is invalid.

USTelecom arrives at this conclusion by parsing the FCC's Mid-2017 VTS Report data. One can derive the total number of non-ILEC owned copper loops by taking total non-ILEC lines provided over owned last mile facilities in VTS Table 1 Reference Line 76 and subtracting non-ILEC lines provided via non-copper delivery mediums. The FCC Mid-2017 VTS Report breaks out all non-ILEC switched lines in four last-mile delivery medium categories: fiber-to-the-premises, coaxial cable, terrestrial fixed wireless, and copper local loop. These are in VTS Table 1 Reference Lines 52, 55, 58, and 61, respectively.[29] When subtracting fiber-to-the-

[28] USTelecom reported figures in the May 6 *Ex Parte* Letter and the May 24 *Ex Parte* Letter in millions, with one decimal. In the remainder of this discussion of the appropriate numerator, USTelecom continues to report in millions, but uses three decimal places to be consistent with Granite's discussion and to show with precision how its calculations reconcile with the FCC Mid-2017 VTS Report.

[29] FCC Mid-2107 VTS Report at Table 1. These line items roll up into Reference Line 49, which is equal to all switched end-user lines shown in Reference Line 13. Since ILECs are not required to provide unbundled or wholesale fiber-to-the-premises, coaxial cable, and terrestrial fixed wireless last miles, one can assume when non-ILECs provide service using these last mile delivery mediums, the non-ILECs own the facilities. Copper local loops are different: non-ILECs own some copper local loops and obtain some from others. The switched copper local loops that non-ILECs own would be included along with all other delivery mediums in the total number of switched lines non-ILECs provide over their own facilities in VTS Table 1 Reference Line 76. Non-ILEC switched lines provided via copper local loops obtained from others would not be included in VTS Reference Line 76, but in VTS Reference Lines 77 (provided via

premises, coaxial cable, terrestrial fixed wireless from all non-ILEC-owned last mile facilities, the result is 1.279 million.[30] This must be the number of non-ILEC lines provided via non-ILEC owned copper local loops since that is the only remaining delivery medium category and all others are accounted for. It turns out that this figure is exactly equal to the difference between Granite's proposed upper bound of 7.626 million lines and its proposed lower bound of 6.347 lines for resold ILEC services in the numerator.

This is no coincidence. To confirm that the numbers reconcile, USTelecom adds the figure it derived for non-ILEC-owned copper loops to all other known non-ILEC copper lines provide via UNE-Loops and wholesale. These items sum to 9.398 million, which is equal to the number of all non-ILEC switched lines provided via copper local loops reported in VTS Reference Line 61 VTS.[31] Therefore, the incremental lines in the new upper bound numerator proposed by Granite beyond the 6.347 million reported are entirely attributable to non-ILEC-owned copper loops and their proposed new upper bound is therefore not valid. Table 2 below details all of these calculations.

b. Granite Bases Proposed Denominator on Faulty Reasoning and Conflated Data

Granite also makes several errors in their discussion of the appropriate denominator. First, they incorrectly state that USTelecom's denominator of 63.4 million represents "all *resold* telephone lines" (emphasis added).[32] In the May 6 *Ex Parte* Letter and May 24 *Ex Parte* Letter, USTelecom identifies the 63.4 million as "non-ILEC retail lines," regardless of the means of provision, i.e., resold, owned, etc.[33]

Granite then claims that the use of a denominator that contains non-copper and non-switched lines is unreasonable because the numerator includes only switched lines.[34] This is

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UNE loops) and 78 (provided via wholesale). Moreover, one would expect that all non-ILEC switched end-user lines provided over copper local loops – those provided via owned copper loops (derived), UNE loops (VTS Reference Line 77), and switched wholesale lines (VTS Reference Line 78) – would be equal to the total reported non-ILEC switched lines served via copper local loops in VTS Reference Line 61. As it turns out, this is the case, as described above.

[30] The calculation is as follows: 4.227 million non-ILEC-owned lines (VTS Reference Line 76) minus 2.219 million fiber-to-the-premises lines (VTS Table 1 Reference Line 52), 0.721 million coaxial cable lines (VTS Table 1 Reference Line 55), and 0.008 million terrestrial fixed wireless lines (VTS Table 1 Reference Line 58) yields 1.279 million copper local loop lines.

[31] The calculation is as follows: 1.279 million USTelecom-derived non-ILEC lines provided via copper local loops plus 1.772 provided via UNE loops (VTS Table 1 Reference Line 77) and 6.347 million via wholesale (VTS Table 1 Reference Line 78). This yields 9.398 million lines, which exactly equals the amount of non-ILEC reported end-user switched lines served via copper local loops.

[32] Granite Reply at 12.

[33] May 6 *Ex Parte* Letter at 13. The source of the figure is VTS Table 1 Reference Line 6.

[34] Granite Reply at 12. Granite also states that the denominator should exclude residential lines. USTelecom addressed the issue of business customers above.

faulty reasoning. The numerator is limited to switched lines only because those are the only lines subject to Section 251(c)(4) resale. The ratio of Section 251(c)(4) resold lines to all voice lines" is the relevant ratio, because it reflects the proportion of all lines that are served by Section 251(c)(4) resold lines. As discussed above, Granite has not established or quantified the extent of any hypothesized switched-copper-loop-only product market. Even if Granite had done so, the proposed numerators and denominators are overbroad and would not accurately measure that hypothetical niche market.[35] Therefore, the results shown on Page 13 and Table 4 of the Granite Replies are invalid.

The charts in Figure 1 and accompanying text on Pages 13 and 14 of the Granite Replies are similarly invalid because they reflect the same methodology using historical data. Even if the data in the charts were valid, the charts would not support the conclusion that Granite claims they do. The charts purport to show that non-ILEC circuit switched copper business lines provided via wholesale service represent a growing portion of both total switched copper business lines and non-ILEC switched copper business lines over the last several years. Granite attributes the trend in the charts to the fact that non-ILEC switched copper lines are declining more slowly than ILEC switched copper lines. However, they err when they conclude that resale of switched copper is "key to ensuring that ILECs face competition." The conclusion does not square with the decline in switched wholesale lines,[36] especially given the continued growth in non-switched alternatives.[37] Granite can only ignore these facts by asserting that there is a separate, narrower product market for switched copper business lines, which as discussed above, they have not established.

Finally, Granite attributes the decline in wholesale services to ILEC retirement of copper loops.[38] To support this claim, Granite cites the change in "copper local loops" (VTS Table 1 Reference Line 59) from mid-year 2014 to mid-year 2017. This is a fundamental misreading of the data contained in the VTS Reports, which only reflect *end-user* subscriptions. The data are entirely silent on whether the underlying facilities have been retired and there is no way to infer from the VTS data the number of retired copper loops. It appears that Granite is inappropriately conflating retail copper line losses with copper loop retirement.[39]

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[35] This assessment is technically limited to Granite's proposed lower bound numerator though in theory it could apply to the upper bound numerator, too. As discussed above, USTelecom has already established that Granite's proposed upper bound numerators are invalid in the first place because they include non-ILEC-owned last mile facilities.

[36] *See* May 6 *Ex Parte* Letter at 3 and May 24 *Ex Parte* Letter at Table 1.

[37] For example, from Mid-Year 2016 to Mid-Year 2017, total end-user business lines (VTS Table 1 Reference Lines 10-12) fell by 0.5 million, from 57.1 million to 56.6 million. During the same period, total switched lines (VTS Table 1 Reference Lines 19-21) fell by 3.7 million to from 36.0 million to 32.3 million while interconnected VoIP lines (VTS Table 1 Reference Lines 28-30) grew 3.2 million from 21.1 million to 24.3 million. It is also possible that businesses and their employees are switching in some degree to wireless or non-interconnected over-the-top options.

[38] Granite Reply at 15-16.

[39] VTS Line 59 refers to a copper loop delivery medium for "local exchange telephone service" (aka switched voice service). This appears to refer to end-user (i.e., retail) lines, because the various

Table 1: Switched Wholesale Share of Business Lines

FCC Form 477 / VTS Data (Thousands, Mid-2017)	Business and Government Voice Services
Total Retail Business and Government Lines	56,599
Total ILEC Retail Business and Government Lines	24,692
Switched	21,313
Interconnected VoIP	3,378
Total Non-ILEC Retail Business and Government Lines	31,908
Non-ILEC Interconnected VoIP Retail Government and Business Lines	20,969
Non-ILEC Switched Retail Government and Business Lines	10,939
Provided over owned last-mile facilities	4,227
Provided over UNE-L obtained from unaffiliated entity	1,772
Provided over other services obtained from unaffiliated entity	6,347
Estimated Portion 251(c)(4) assuming 15.3%	970
Wholesale Share of Total and Non-ILEC Retail Lines (Mid-2017)	
251(c)(4) Share of 4 Carriers' Total ILEC Wholesale Lines (USTelecom Data)	15.3%
Non-ILEC Lines Using Wholesale as Share of Non-ILEC Retail Lines (FCC Data)	19.9%
Estimated Share of Non-ILEC Retail Lines Using 251(c)(4) Resale*	3.0%
Non-ILEC Lines Using Wholesale as Share of Total ILEC and Non-ILEC Retail Lines (FCC Data)	11.2%
Estimated Share of Total ILEC and Non-ILEC Retail Lines Using 251(c)(4) Resale*	1.7%

* Assumes 6.347 million Non-ILEC voice connections nationwide using wholesale are business/government lines and, extrapolating from USTelecom data for 4 ILECs, 15.3% of Non-ILEC lines using wholsale are provided pursuant to 251(c)(4).

categories of delivery medium (Fiber-to-the-premises, Coaxial cable, Terrestrial fixed wireless, and Copper local loop) roll up into VTS Reference Line 49, which equals VTS Reference Line 13, Local telephone exchange service (Switched Access Lines). VTS Reference Lines 13, along with Reference Line 22 (Interconnected VoIP Subscriptions) roll up into Line 4, "Wireline *End-User* Switched Access Lines and Interconnected VoIP Subscriptions" (emphasis added).

Table 2: Analysis and Reconciliation of Non-ILEC Facilities-Based and Wholesale Lines

Reference		
Source Data from Mid-Year 2017 VTS		
13	Switched Access Lines	54,748
14	ILEC Switched Access Lines	42,401
15	Non-ILEC Switched Access Lines	12,346
49	Switched Access by Last Mile Deliver Medium	54,748
52	Non-ILEC Fiber	2,219
55	Non-ILEC Coax	721
58	Non-ILEC Fixed Wireless	8
61	Non-ILEC Copper	9,398
52 + 55 + 58 + 61	Sum	12,346
75	Non-ILEC Switched Access Lines by Means of Provisioning	12,346
76	Owned Last Mile Facilities	4,227
77	UNE-L Obtained from an Unaffiliated Entity	1,772
78	Other Services Obtained from an Unaffiliated Entity	6,347
Granite Commenters Proposed Upper Bound Numerator (Non-ILEC Lines via Wholesale)		
61	Non-ILEC Copper Loops (Switched)	9,398
77	Non-ILEC Lines via UNE-L	1,772
61 - 77	Difference (Granite Commenters' Upper Bound)	7,626
78	ILEC Lines via Other Services Obtained from an Unaffiliated Entity (Wholesale) (Granite Commenters' Lower Bound)	6,347
61-77-78	Difference between Granite Commenters' Proposed Upper and Lower Bounds	1,279
Non-ILEC Owned Last Miles		
76	Non-ILEC Switched Access Services Provided via Owned Last Mile Facilities	4,227
	Non-ILEC Reported Switched Access Lines via Last Mile Delivery Medium (Assumes non-copper mediums are all non-ILEC-owned since ILECs are not required to provide via wholesale)	
52	Fiber	2,219
55	Coaxial Cable	721
58	Fixed Wireless	8
76 - 52 - 55 -58	Difference (Copper)	1,279
Reconciliation		
76 - 52 - 55 -58	Non-ILEC Services Provided via Owned Copper	1,279
77	Non-ILEC Services Provided via UNE-Loops	1,772
78	Non-ILEC Services Provided via Wholesale	6,347
Sum	Sum = Non-ILEC Swiched Cooper Loops in Line 61	9,398

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As described above, the law and the facts support nationwide forbearance from the Section 251(c)(4) resale mandate. There is no merit to the contention that the Commission cannot grant the Petition without conflicting with the APA. Given widespread voice competition and a flourishing commercial marketplace for wholesale voice service, forbearance is in the public interest.

Please direct any questions to the undersigned.

Sincerely,

/s/ Patrick R. Halley
Patrick R. Halley
Senior Vice President, Policy & Advocacy
USTelecom – The Broadband Association